

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY W. JOHNSON, JR.,

Plaintiff,

v.

R. W. FRITZ, et al.,

Defendants.

No. C 12-00722 EJD (PR)

ORDER DIRECTING DEFENDANT  
WARRINGTON TO FILE  
DISPOSITIVE MOTION OR NOTICE  
REGARDING SUCH MOTION;  
DISMISSING MOTION FOR LEAVE  
TO PROCEED *IN FORMA PAUPERIS*  
ON APPEAL

(Docket No. 101)

Plaintiff, a California inmate, filed the instant civil rights action in pro se pursuant to 42 U.S.C. § 1983 against prison officials at the Salinas Valley State Prison ("SVSP") for unconstitutional acts. On September 30, 2013, the Court granted Defendants R. W. Fritz, A. Hedgpeth, T. Selby, B. Martinez, P. Nickerson, B. Hedrick, G. Biaggini, Ms. Park, A. Meden, W. Muniz, Dr. Card and G. Ramirez's motion for summary judgment, and dismissed all claims against them with prejudice. (Docket No. 96.)

The sole remaining defendant, Dr. J. Warrington,<sup>1</sup> was ordered to show cause why default judgment should not be entered against him. (Id.) On October 28,

<sup>1</sup>Plaintiff originally spelled Defendant's name as "Worrington" in his complaint. Defendant's response indicates that the correct spelling is "Warrington."

2013, Defendant Warrington filed a timely response, indicating that he first received notice of this action against him on October 4, 2013, and has since obtained counsel. (See Docket No. 99.) Good cause appearing, the Court finds Defendant Warrington is not in default. (Warrington Decl. at 2; Docket No. 100.)

Plaintiff has filed a motion for leave to proceed in forma pauperis ("IFP") on appeal. (Docket No. 101.) Plaintiff was never granted IFP status in this action because he paid the filing fee in full at the outset. (See Docket No. 10.) Accordingly, Plaintiff must file this motion directly with the United States Court of Appeals for the Ninth Circuit who will conduct an independent review of the record to determine whether the appeal is frivolous. Accordingly, the motion is DISMISSED to filing it in the Ninth Circuit.

### CONCLUSION


For the reasons stated above, Defendant Dr. J. Warrington shall file a motion for summary judgment or other dispositive motion with respect to the claims against him **no later than fifty-six (56) days** from the date this order is filed. Briefing shall proceed thereafter, in accordance with the schedule and instructions set forth in the Court's Order of Service, filed August 9, 2012, (Docket No. 16).

The Clerk shall update the docket to reflect Defendant Dr. J. Warrington's correct name.

This order terminates Docket No. 101.

DATED: \_\_\_\_\_

10/30/13

  
EDWARD J. DAVILA  
United States District Judge